Supreme Court, U. S.
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SUPREME COURT
OF THE UNITED STATES

No. 79-1666

October Term 1979

JACK FLETCHER,

Petitioner,

vs.

CALIFORNIA PORTLAND CEMENT COMPANY, et al.,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

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SUPREME COURT
OF THE UNITED STATES

No. _____

October Term 1979

JACK FLETCHER,

Petitioner,

vs.

CALIFORNIA PORTLAND CEMENT COMPANY, et al.,

Respondents.

Opposition to Petition For Writ Of Certiorari To The Court of Appeal, State of California, Second Appellate District.

INTRODUCTION

Respondent California Portland Cement Company respectfully prays that the United States Supreme Court deny this Petition for Writ of Certiorari on the ground that it does not present a federal question and on the further ground that Petitioner has not complied with the United States Supreme Court Rules in filing his Petition.

OPINION OF THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

The opinion of the Court of Appeal of the State of California, Second Appellate District is reported at 99 Cal. App. 3d 97 and 159 Cal. Rptr. 915. The decision is reprinted in Appendix A of the Petition for Writ of Certiorari filed by Petitioner.

ISSUES PRESENTED

1. The United States Supreme Court does not have jurisdiction to grant the Petition for Writ of Certiorari because no federal question was presented in the California state court action, either at trial or on appeal.

2. Since Petitioner has failed to set out the federal question presented and has failed to state the time, manner and method by which the purported federal question was raised in state court, the Petition should be denied.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Petition before the court does not present a constitutional issue involving the interpretation of a federal matter.

STATEMENT OF CASE

Petitioner's Complaint alleges that in November 1972, Petitioner, a railroad switchman employed by Southern Pacific Transportation Company, was injured when he fell into a hole beside a track while performing switching operations on the premises of California Portland Cement Company.

In October 1973, plaintiff filed a complaint against Southern Pacific Transportation Company and California Portland Cement Company in the United States Federal District Court for the Central District of California alleging that he sustained personal injuries as the result of the dangerous condition of equipment and premises on which he was working. **The basis for liability against the Southern Pacific Transportation Company was the Federal Employers' Liability Act, 45 U.S.C. §51 et seq., and the basis for liability against defendant California Portland Cement Company was common law negligence.** In November of 1973, plaintiff filed a similar complaint in the Los Angeles Superior Court naming the same defendants and alleging the same facts.

In March of 1974, the complaint against California Portland Cement Company was dismissed by the Federal District Court for lack of jurisdiction. Nevertheless, plaintiff proceeded with the prosecution of his federal action against Southern Pacific Transportation Company, and in September of 1974 he obtained a jury verdict for damages in an amount of $75,625.00. The jury found that

$137,500.00 was the sum that would fully compensate plaintiff for his injuries but that plaintiff's negligence contributed 45 percent to his injuries. Judgment was entered against Southern Pacific Transportation Company for $75,625.00, that was paid in full in October of 1974, and a satisfaction of judgment was filed by the plaintiff.

When the state court action subsequently came to trial in Septrember of 1977, California Portland Cemnet Company asserted two special defenses against Petitioner's action for common law negligence: (1) satisfaction and payment of the federal judgment barred the state action, and (2) plaintiff was collaterally estopped from relitigating the issues of damages and comparative negligence. **After receiving evidence and hearing argument on the special defenses, the trial court concluded that satisfaction of the federal judgment discharged California Portland Cement Company from any liability to plaintiff arising out of the operative facts that formed the basis of and constituted the cause of action prosecuted by plaintiff.**

From the judgment in favor of California Portland Cement, plaintiff appealled to the Court of Appeal of the State of California, Second Appellate District. Applying California law, that court affirmed the judgment of the trial court, holding that the satisfaction of the judgment rendered in the federal court precluded Petitioner from obtaining a further recovery against California Portland Cement Company. The California Supreme Court denied

Petitioner's Petition for Hearing on January 24, 1980. No federal question was raised, either at trial or on appeal.

REASONS FOR DENIAL OF THE PETITION

I

THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION TO GRANT THE PETITION FOR WRIT OF CERTIORARI BECAUSE NO FEDERAL QUESTION WAS PRESENTED IN THE CALIFORNIA STATE COURT ACTION, EITHER AT TRIAL OR ON APPEAL

No federal question is presented by the judgment rendered in the California state court action, and therefore, the United States Supreme Court does not have jurisdiction to grant the Petition for Writ of Certiorari. On this issue of jurisdiction, the United States Supreme Court stated the following:

> **We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause; that**

> **the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. Southwestern Bell Telegraph Company v. Oklahoma**, 303 U.S. 206, 212-213, 58 S. Ct. 528, 82 L. Ed. 751, 757 (1938) (emphasis added).

In the instant action the trial court rendered judgment for Respondent and against Petitioner on the sole ground that satisfaction and payment of the judgment by Southern Pacific Transportation Company barred any further recovery against Respondent, which was an alleged joint or concurrent tortfeasor. The trial court's decision was based upon the common law of the State of California, as had earlier been delineated in the California cases of **Watson v. McEwen**, 225 Cal. App. 2d 771, 744-775, 37 Cal. Rptr. 677 (1964); and **Winzler & Kelly v. Superior Court,** 48 Cal. App. 3d 385, 392-393, 122 Cal. Rptr. 259 (1975). The California common law rule as enumerated in those cases is that a plaintiff may have only one recovery, and where he has obtained a judgment which has been paid and satisfied he may not obtain any further recovery from an alleged joint or concurrent tortfeasor. No federal question is raised by the application of this rule of California common law.

Petitioner argues, by implication only, that the California state court's ruling, and the appellate court's affirmation of that ruling, involved interpretation of the Federal Employers' Liability Act, Title 45 United States Code § 51. An inspection of the California Court of

Appeal, Second District, opinion (Appendix "A" to the Petition) reveals that no interpretation of the Federal Employers' Liability Act was required and none occurred. Accordingly, no federal question was presented and, therefore, the Petition must be denied.

II

THE PETITION SHOULD BE DENIED BECAUSE PETITIONER HAS FAILED TO SET OUT THE FEDERAL QUESTION PRESENTED AND HAS FAILED TO STATE THE TIME, MANNER AND METHOD BY WHICH THE PURPORTED FEDERAL QUESTION WAS RAISED IN STATE COURT.

Petitioner has failed to comply with Rule 23(f) of the Supreme Court Rules (28 U.S.C.A. Rule 23(f) which provides that:

> (f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings of the court of first instance and in the appellate court, at which, and the manner in which, the federal question sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof,

with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, then they shall be included in an appendix to the petition, which may, if more convenient, be separately presented.

It is apparent from the Petition that the manner and method by which a federal question was raised has not been stated, nor have pertinent portions of the record been provided, in order to show that a federal question was timely raised. These omissions alone provide a sufficient basis for denying the Petition. Title 28 U.S.C.A. Rule 23(4) states:

> 4. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Therefore, on this ground alone, the Petition should be denied.

CONCLUSION

The Petition should be denied because it does not present a federal question and because Petitioner has failed to comply with the requirements of Title 28, U.S.C.A. 23(f).

Respectfully submitted,

GARVIN F. SHALLENBERGER
Member of the Bar of
the U.S. Supreme Court
and
Messrs. Rutan & Tucker, Theodore I.
Wallace, Jr., and William J. Caplan

Attorneys for Respondent

May _____ , 1980

PROOF OF SERVICE

STATE OF CALIFORNIA)
ss.
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my busines address is 612 N. Bush Street, Santa Ana, California 92701.

On May 21, 1980 I served the within OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in each of 4 sealed envelopes with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

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Clerk of the Superior Cour
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Clerk, Court of Appeal
Second Appellate District
3580 Wilshire Blvd., 3rd Floor
Los Angeles 90010

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 21, 1980, at Santa Ana, California.

JACK GALLAGHER